



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Secretary

June 30, 1999

Mr. Dennis Grams
Regional Administrator
Region VII, U.S. Environmental Protection Agency
Kansas City, Kansas

Dear Mr. Grams:

With this letter, the Kansas Department of Health and Environment submits the required Total Maximum Daily Loads (TMDLs) for impaired streams and lakes in the Kansas-Lower Republican Basin (KLR) identified on the 1998 Section 303d list. This submittal is made pursuant to Paragraph 7 of the Consent Decree ordered on April 13, 1998 by Judge Lungstrum. The attached table identifies the individual TMDLs established for 119 impaired streams and lakes in the KLR.

Each of these TMDLs reflects public comments made at public meetings; the June 3, 1999 public hearing; discussions with interest groups representing municipalities, agriculture, or the environment, state agencies involved with water quality protection in the state; and KDHE and EPA staff draft comments.

Each TMDL describes the impaired waterbody, the pollutant of concern, potential sources of the pollutant and its priority ranking. The applicable 1999 water quality standards, to be adopted by July 1, 1999 and effective by July 15 are referenced and numeric endpoint targets are provided. Each TMDL has a description of the desired loading capacity relationship with the desired endpoints and associated load allocations, wasteload allocations and margin of safety. In all cases, seasonal variations were considered. These TMDLs place a heavy emphasis on implementation and monitoring plans over the next ten years. Reasonable assurances, in terms of existing authority, funding sources and interim milestones are provided in each case.

Public participation has been documented, including the use of the state water planning process and the KLR Basin Advisory Committee, as well as the aforementioned meetings with the varied interest groups. This submittal letter governs all 119 TMDL submissions. The Department is maintaining an administrative record of the establishment of these TMDLs, including correspondence, analysis and comments made on previous drafts. With this submission, Region VII has 30 days to review and approve these TMDLs. I trust that the ongoing discussions between our staffs will facilitate that review.

I want to make you aware of our determination, under Paragraph 5 of the Consent Decree, that TMDLs are not necessary for the impairment issues associated solely with point sources. These issues number 16 and are identified on the attached list with the term "PERM" under their respective implementation priority. In every case, the original reason for citing the impairment was modeling results of design wasteloads from municipal and industrial point sources. There are no ambient data to verify those modeling results, because of the dearth of critically low flow conditions seen in the basin since 1991.

Dennis Grams

h:grams

Capitol Tower
400 S.W. 8th Avenue, Suite 200
(785) 296-0461

Printed on Recycled Paper

Topeka, KS 66603-3930
FAX (785) 368-6368

Paragraph 5 of the Consent Decree states "In fulfilling their obligations under this Consent Decree, Kansas is under no obligation to submit TMDLs to EPA nor is EPA under any obligation to establish TMDLs either (a) that are determined not to be needed consistent with Section 303(d) of the CWA and its implementing regulations, as either may be amended from time to time, including, but not limited to, 40 C.F.R. § 130.7(b)(1),"

In the Clean Water Act, Section 303(d)(1)(A) states: "Each State shall identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) are not stringent enough to implement any water quality standard applicable to such waters."

Also, under the CWA, Section 510 states: "...nothing in this Act shall (1) preclude or deny the right of any State or political subdivision thereof, or interstate agency to adopt or enforce (A) any standard of limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution;....."

The latter provision is important because the implementing regulation for Section 303(d) at C.F.R. § 130.7(b)(1) states: "Each State shall identify those water quality limited segments still requiring TMDLs within its boundaries for which: (i) Technology-based effluent limitations required by section 301(b), 306, 307, or other section of the Act; (ii) More stringent effluent limitations (including prohibitions) required by either State or local authority preserved by section 510 of the Act, or Federal authority law, regulation or treaty; and (iii) Other pollution control requirements (e.g., best management practices required by local, State, or Federal authority are not stringent enough to implement any water quality standards (WQS) applicable to such waters." (Emphasis added).

The second condition comes into play here regarding our listed impairments from point sources. The source of that impairment listing was modeled results analyzing resulting ammonia concentrations from point sources discharging at design flows at critical low flow (7Q10, now 30Q10) conditions. With the adoption of the 1999 water quality standards on July 1, I shall use my authority under K.S.A. 65-165 through 65-171d to require the next set of revised NPDES permits contain applicable effluent limitations to attain the ammonia criteria within the water quality standards. Holton, Topeka, Lawrence, Junction City, St. Marys, Mankato, Belleville, Sabetha, Basehor and Auburn will be subject to revised permits. EPA has jurisdiction over the Johnson County Nelson Plant discharging into Turkey Creek. I strongly urge rapid processing of revising and reissuing that permit so that Johnson County Wastewater can initiate appropriate upgrades at the Nelson Plant.

Therefore, consistent with federal regulations, since we have not yet employed more stringent state effluent limitations, to warrant an evaluation that a TMDL is needed to address these issues. A similar analysis can be applied to disinfection for bacteria at St. Marys, Junction City and Sabetha and BOD removal for dissolved oxygen at Sabetha. These cases of impairment in the Kansas-Lower Republican Basin will be addressed through permit issuance, schedules of compliance and necessary plant upgrades. As is the case at a number of other municipal facilities around the state where such upgrades have been made to comply with the ammonia or other standards, the TMDLs are determined not to be needed in order to meet water quality standards and it is determined that no TMDL be established on those modeled stream segments indicating impairment from point source discharge.

The previous statement is not to be construed as a finding that there is no potential impairment to the listed streams from these point sources. In fact, there likely is some impairment at critical low flows, dictating that permit limits, reflecting the 1999 water quality standards, be applied to the discharges of those point sources such that there is a sufficient level of protection provided to the stream. My expectation is that such permits should be issued during the year 2000 or at appropriate renewal date.

These TMDLs place a heavy emphasis on implementation. Recognizing that limited resources are available to direct toward pollution reduction, especially regarding non-point sources, we have created three tiers of implementation priority. The highest priority TMDLs direct implementation commence immediately after the approval of the TMDL and continue over the next five years. The medium priority TMDLs defer implementation until additional source assessment is completed and efforts are well underway at the high priority watersheds. Medium TMDLs will begin implementation after 2004. Finally, low priority TMDLs involve a great deal of uncertainty regarding the actual impairment or the ability to control the source of the pollutant. Such TMDLs will continue to have monitoring in place and additional source assessment. The status of impairment will be revisited based on monitoring over the next five years during the development of the 2004 Section 303d list.

These final draft TMDLs, public comments and the Department's approach are provided via the Internet at <http://www.kdhe.state.ks.us/tmdl/>. Your staff may consult that site for additional background regarding this submission. Additionally, the Kansas Water Authority has incorporated these TMDLs as part of the KLR Basin Plan Section of the Kansas Water Plan. This ensures that state and basin planning efforts are directed to priority TMDL implementation. The final draft of the plan section is also attached.

Should you have any questions regarding this submission, please contact Dr. Ron Hammerschmidt, Director of Environment at 785-296-1535. I appreciate the efforts made by your staff to stay abreast of the Department's approach in establishing these TMDLs. I look forward to your timely review of these TMDLs.

Sincerely,

Clyde D. Graeber
Secretary

Attachments

cc: John Simpson, Esq.
William Craven, Esq
Charles Benjamin